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DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 94-0454
Controlled Substance Excise Tax
For The Period: 1994

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ISSUES

I. Controlled Substance Excise Tax—Liability

Authority: IC 6-7-3-5; IC 6-8.1-5-1(a); Bryant v. Indiana Department of State Revenue, 660 N.E.2d 290 (Ind. 1995); Clifft v. Indiana Department of State Revenue, 660 N.E.2d 310 (Ind. 1995); Hall v. Indiana Department of State Revenue, 660 N.E.2d 319 (Ind. 1995).

The taxpayer protests the assessment of controlled substance excise tax.

STATEMENT OF FACTS

Taxpayer was arrested for possession of marijuana. On January 9, 1994, an Indiana police officer, after having arrested taxpayer on a separate charge, discovered what appeared and was later confirmed to be marijuana in the taxpayer's possession. The weight was 21.8 grams. The Department issued a jeopardy assessment against the taxpayer on April 21, 1994. The taxpayer timely filed a protest of the assessment. Two separate hearings were scheduled for taxpayer to address the protest. Neither the taxpayer nor a representative of the taxpayer appeared. Several attempts were made to contact the taxpayer using the best information available, including the address listed with the Bureau of Motor Vehicles. Still, the taxpayer failed to respond. This determination is made based on the protest that was filed.

I. Controlled Substance Excise Tax—Liability

DISCUSSION

In Indiana, the manufacture, possession or delivery of marijuana is taxable. IC 6-7-3-5. There was no controlled substances excise tax ("CSET") paid on the taxpayer's marijuana, so the

Department assessed the tax against him and demanded payment. The taxpayer's sole contention is that he was never convicted of being in possession of a controlled substance. However, this has no bearing on the validity of the Department's assessment. Indiana law specifically provides that notice of a proposed assessment is *prima facie* evidence that the Department's claim for the unpaid tax is valid. The taxpayer then bears the burden of proving that the proposed assessment is wrong. IC 6-8.1-5-1(a). Beside the statutory language providing validity to the assessment, the Department has presented more than sufficient evidence to demonstrate that the taxpayer was in possession of marijuana on the date of the arrest.

Even if the taxpayer had raised constitutional issues such as double jeopardy, which he did not, a discussion of the constitutional issues is not necessary. First, the taxpayer never faced any other jeopardy for the marijuana possession, so double jeopardy is not an issue. Second, the Department jeopardy assessment would be first in time and only a subsequent jeopardy would violate the double jeopardy clause. Finally, the law is well settled that the CSET statute is valid. See Bryant v. Indiana Department of State Revenue, 660 N.E.2d 290 (Ind. 1995); Clifft v. Indiana Department of State Revenue, 660 N.E.2d 310 (Ind. 1995); Hall v. Indiana Department of State Revenue, 660 N.E.2d 319 (Ind. 1995).

Given that the Department's jeopardy attached first, and the taxpayer has not overcome the *prima facie* burden of disproving possession, the protest is denied.

FINDING

The taxpayer's protest is denied.